

**Introduced by Senator Calderon**

February 25, 2009

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An act to add Section 598.1 to the Penal Code, relating to dogfighting.

LEGISLATIVE COUNSEL'S DIGEST

SB 318, as introduced, Calderon. Dogfighting forfeitures.

Existing law makes dogfighting, as specified, an offense.

This bill would provide forfeiture procedures for certain property connected with the crime of dogfighting, as specified. The bill would state findings and declarations of the Legislature in that regard, and the intent of the Legislature in connection with the forfeiture proceeding provisions.

By imposing additional duties on local prosecuting agencies, this bill would impose a state-mandated local provision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares the  
2     following:

1 (1) Dogfighting is an insidious underground organized crime  
2 and, notwithstanding its absolute prohibition in America, this crime  
3 has reached epidemic proportions in all urban communities and  
4 continues to thrive in many rural areas as well.

5 (2) Many communities have been morally, socially, and  
6 culturally scarred by the continuing presence of dogfighting.  
7 Children who are exposed to the unfathomable violence of  
8 dogfighting are conditioned to believe that violence is normal and  
9 are systematically desensitized to the consequential suffering.

10 (3) Dog fighters are violent criminals who engage in a whole  
11 host of peripheral criminal activities. Many are heavily involved  
12 in organized crime, racketeering, drug distribution, and  
13 gang-related criminal activity, and they arrange and attend the  
14 fights as a forum for gambling and drug trafficking. These  
15 activities, both individually and collectively, present a clear and  
16 present danger to public order and safety and are not  
17 constitutionally protected.

18 (4) An effective means of punishing and deterring the criminal  
19 activities of dog fighters is through forfeiture of the property, both  
20 personal and real, profits, proceeds, and the instrumentalities  
21 acquired, accumulated, or used by dogfighting participants,  
22 organizers, transporters of animals and equipment, property owners  
23 who allow their premises to be used for dogfighting and other  
24 activities in support of dogfighting, and breeders and trainers of  
25 fighting dogs, and persons who steal and illegally obtain dogs and  
26 other animals for fighting, including bait and sparring animals.

27 (5) Dogfighting not only encourages and furthers antisocial  
28 values and violence but it also results in the antisocialization of  
29 dogs thereby making them a danger to the community at large.  
30 Police officers, firefighters, utility, and other municipal workers  
31 are at increasing risk in the course of their employment on both  
32 public and private property because of the epidemic number of  
33 dogs that have been bred and trained to fight each other as well as  
34 other animals, small children, and adults.

35 (6) Public animal shelters, humane societies, and nonprofit  
36 animal rescue and adoption groups that rescue and care for animals  
37 bear much of the social, economic, and moral burden caused by  
38 dogfighting. Specialized multiagency law enforcement entities  
39 such as anticruelty task forces comprised of municipal animal  
40 control, local police, sheriff, and city and district attorneys

1 investigating, arresting, and prosecuting dogfighting and other  
2 crimes against animals are a critical component of the goal of  
3 reducing and eliminating this heinous crime in California, yet these  
4 agencies suffer from limited resources.

5 (7) Forfeited property, profits, proceeds, and instrumentalities  
6 acquired, accumulated, or used by dogfighting participants and  
7 others acting in support of dogfighting, should be sold to support  
8 efforts to care for abused animals and the law enforcement entities  
9 specially formed to address dogfighting and animal cruelty,  
10 wherever possible. Distribution of the above should be determined  
11 by the state or local governing bodies, depending upon which is  
12 responsible for the prosecution as a result of which the proceeds  
13 were seized.

14 (b) It is the intent of the Legislature in enacting this act to seek  
15 the eradication of dogfighting by systematically reducing the  
16 economic resources available to those criminals who facilitate and  
17 support the crime of dogfighting.

18 SEC. 2. Section 598.1 is added to the Penal Code, to read:

19 598.1. (a) In any case in which a person is convicted of any  
20 of the crimes described in subdivision (a) of Section 597.5, the  
21 assets listed in subdivision (b) shall be subject to forfeiture upon  
22 proof of the elements of subdivision (b).

23 (b) (1) Any property interest, whether tangible or intangible,  
24 that was either acquired through the commission of any of the  
25 crimes listed in subdivision (a) of Section 597.5 or used to facilitate  
26 the crimes listed in subdivision (a) of Section 597.5, shall be  
27 subject to forfeiture, including both personal and real, profits,  
28 proceeds, and the instrumentalities acquired, accumulated, or used  
29 by dogfighting participants, organizers, transporters of animals  
30 and equipment, property owners who knowingly allow their  
31 premises to be used for dogfighting and other activities in support  
32 of dogfighting, and breeders and trainers of fighting dogs, and  
33 persons who steal and illegally obtain dogs and other animals for  
34 fighting, including bait and sparring animals.

35 (2) Notwithstanding paragraph (1), the following property shall  
36 not be subject to forfeiture under this section:

37 (A) Property solely owned by a bona fide purchaser for value,  
38 who was without knowledge that the property was intended to be  
39 used for a purpose which would subject it to forfeiture under this  
40 section, or is subject to forfeiture under this section.

1 (B) Property used as a family residence and owned by two or  
2 more inhabitants, one of whom had no knowledge of its unlawful  
3 use.

4 (c) (1) The prosecuting agency shall, in conjunction with the  
5 criminal proceeding, file a petition of forfeiture with the superior  
6 court of the county in which the defendant has been charged with  
7 the commission of any of the crimes listed in subdivision (a) of  
8 Section 597.5, that shall allege that the defendant has committed  
9 those crimes and the property is forfeitable pursuant to subdivision  
10 (a).

11 (2) The prosecuting agency shall make service of process of a  
12 notice regarding that petition upon every individual who may have  
13 a property interest in the alleged proceeds, which notice shall state  
14 that any interested party may file a verified claim with the superior  
15 court stating the amount of the party's claimed interest and an  
16 affirmation or denial of the prosecuting agency's allegation.

17 (3) If the notices cannot be served by registered mail or personal  
18 delivery, the notices shall be published for at least three consecutive  
19 weeks in a newspaper of general circulation in the county where  
20 the property is located.

21 (4) If the property alleged to be subject to forfeiture is real  
22 property, the prosecuting agency shall, at the time of filing the  
23 petition of forfeiture, record a lis pendens in each county in which  
24 real property alleged to be subject to forfeiture is located.

25 (5) The judgment of forfeiture shall not affect the interest of  
26 any third party in real property that was acquired prior to the  
27 recording of the lis pendens.

28 (6) All notices shall set forth the time within which a claim of  
29 interest in the property seized is required to be filed pursuant to  
30 this section.

31 (d) Any person claiming an interest in the property or proceeds  
32 seized may, at any time within 30 days from the date of the first  
33 publication of the notice of seizure, or within 30 days after receipt  
34 of the actual notice, file with the superior court of the county in  
35 which the action is pending, a verified claim stating his or her  
36 interest in the property or proceeds. A verified copy of the claim  
37 shall be given by the claimant to the Attorney General, or the  
38 district or city attorney, whichever is the prosecuting agency of  
39 the underlying crime.

1 (e) (1) If, at the end of the time set forth in subdivision (d), an  
2 interested person, other than the defendant, has not filed a claim,  
3 the court, upon a motion, shall declare that the person has defaulted  
4 upon his or her alleged interest, and it shall be subject to forfeiture  
5 upon proof of the elements of subdivision (b).

6 (2) The defendant may admit or deny that the property is subject  
7 to forfeiture pursuant to this section. If the defendant fails to admit  
8 or deny, or fails to file a claim of interest in the property or  
9 proceeds, the court shall enter a response of denial on behalf of  
10 the defendant.

11 (f) (1) The forfeiture proceeding shall be set for hearing in the  
12 superior court in which the underlying criminal offense will be  
13 tried.

14 (2) If the defendant is found guilty of the underlying offense,  
15 the issue of forfeiture shall be promptly tried, either before the  
16 same jury or before a new jury in the discretion of the court, unless  
17 waived by the consent of all parties.

18 (g) At the forfeiture hearing, the prosecuting agency shall have  
19 the burden of establishing beyond a reasonable doubt that the  
20 defendant was engaged in any of the crimes described in  
21 subdivision (a) of Section 597.5 and that the property comes within  
22 the provisions of subdivision (b).

23 (h) Concurrent with, or subsequent to, the filing of the petition,  
24 the prosecuting agency may move the superior court for the  
25 following pendente lite orders to preserve the status quo of the  
26 property alleged in the petition of forfeiture:

27 (1) An injunction to restrain all interested parties and enjoin  
28 them from transferring, encumbering, hypothecating, or otherwise  
29 disposing of that property.

30 (2) Appointment of a receiver to take possession of, care for,  
31 manage, and operate the assets and properties so that such property  
32 may be maintained and preserved.

33 (i) No preliminary injunction may be granted or receiver  
34 appointed without notice to the interested parties and a hearing to  
35 determine that the order is necessary to preserve the property,  
36 pending the outcome of the criminal proceedings, and that there  
37 is probable cause to believe that the property alleged in the  
38 forfeiture proceedings are proceeds or property interests forfeitable  
39 under subdivision (a). However, a temporary restraining order may

1 issue pending that hearing pursuant to the provisions of Section  
2 527 of the Code of Civil Procedure.

3 (j) If the trier of fact at the forfeiture hearing finds that the  
4 alleged property or proceeds are forfeitable pursuant to subdivision  
5 (a), and that the defendant was convicted of a crime listed in  
6 subdivision (a) of Section 597.5, the court shall declare that  
7 property or proceeds forfeited to the state or local governmental  
8 entity, subject to distribution as provided in subdivision (l).

9 (k) (1) If the trier of fact at the forfeiture hearing finds that the  
10 alleged property is forfeitable pursuant to subdivision (a) but does  
11 not find that a person holding a valid lien, mortgage, security  
12 interest, or interest under a conditional sales contract acquired that  
13 interest with actual knowledge that the property was to be used  
14 for a purpose for which forfeiture is permitted, and the amount  
15 due to that person is less than the appraised value of the property,  
16 that person may pay to the state or the local governmental entity  
17 that initiated the forfeiture proceeding, the amount of the registered  
18 owner's equity, that shall be deemed to be the difference between  
19 the appraised value and the amount of the lien, mortgage, security  
20 interest, or interest under a conditional sales contract. Upon that  
21 payment, the state or local governmental entity shall relinquish all  
22 claims to the property.

23 (2) If the holder of the interest elects not to make that payment  
24 to the state or local governmental entity, the property shall be  
25 deemed forfeited to the state or local governmental entity.

26 (3) The appraised value shall be determined as of the date  
27 judgment is entered either by agreement between the legal owner  
28 and the governmental entity involved, or if they cannot agree, then  
29 by a court-appointed appraiser for the county in which the action  
30 is brought.

31 (4) If the amount due to a person holding a valid lien, mortgage,  
32 security interest, or interest under a conditional sales contract is  
33 less than the value of the property and the person elects not to  
34 make payment to the governmental entity, the property shall be  
35 sold at public auction by the Department of General Services or  
36 by the local governmental entity which shall provide notice of that  
37 sale by one publication in a newspaper published and circulated  
38 in the city, community, or locality where the sale is to take place.  
39 Proceeds of the sale shall be distributed pursuant to subdivision  
40 (n).

1 (l) Notwithstanding that no response or claim has been filed  
2 pursuant to subdivision (d), in all cases where property is forfeited  
3 pursuant to this section and is sold by the Department of General  
4 Services or a local governmental entity, the property forfeited or  
5 the proceeds of the sale shall be distributed by the state or local  
6 governmental entity as follows:

7 (1) To the bona fide or innocent purchaser, conditional sales  
8 vendor, or holder of a valid lien, mortgage, or security interest, if  
9 any, up to the amount of his or her interest in the property or  
10 proceeds, when the court declaring the forfeiture orders a  
11 distribution to that person. The court shall endeavor to discover  
12 all those lienholders and protect their interests and may, at its  
13 discretion, order the proceeds placed in escrow for a period not to  
14 exceed 60 additional days to ensure that all valid claims are  
15 received and processed.

16 (2) To the Department of General Services or local governmental  
17 entity for all expenditures made or incurred by it in connection  
18 with the sale of the property, including expenditures for any  
19 necessary repairs, storage, or transportation of any property seized  
20 under this section.

21 (3) To local nonprofit organizations exempt under Section  
22 501(c)(3) of the Internal Revenue Code whose primary activities  
23 include ongoing rescue, foster, or other care of animals that are  
24 the victims of dogfighting, and to law enforcement entities,  
25 including multiagency task forces, that actively investigate and  
26 prosecute animal fighting crimes.

27 (4) Any remaining funds not fully distributed to organizations  
28 or entities pursuant to paragraph (3) shall be deposited in an escrow  
29 account or restricted fund to be distributed as soon as possible in  
30 accordance with paragraph (3).

31 SEC. 3. If the Commission on State Mandates determines that  
32 this act contains costs mandated by the state, reimbursement to  
33 local agencies and school districts for those costs shall be made  
34 pursuant to Part 7 (commencing with Section 17500) of Division  
35 4 of Title 2 of the Government Code.